IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6909 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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JAGDISH @ PINTU S/O.RAMTIRTH RAMSAMUJ YADAV-THR'HIS FATHER - Petitioner(s)
Versus
COMMISSIONER OF POLICE AHMEDABAD CITY & 2 - Respondent(s)

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Appearance :
MS DR KACHHAVAH for Petitioner(s) : 1,MR KAMLESH KACHHAVAH for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MR AY KOGJE, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 06/09/2006

ORAL JUDGMENT

1. By means of filing this petition, the petitioner has challenged the detention order No. PCB/DTN/PASA/31/2006 dated 16.02.2006 passed by the Police Commissioner, Ahmedabad City against the detenu who has been declared as a dangerous person.

2. Learned Advocate for the petitioner has invited my attention to the order of detention dated 16.02.2006 as well as grounds supplied therein, by which petitioner was detained on the same day and sent to District Jail,

Rajkot. As the grounds of detention three criminal cases have been shown as registered against the petitioner. All the three offences are registered before the Satellite Police Station punishable under Section 380, 354 and 457 of the I.P.C. In all the three cases, the investigation is going on.

3. I have heard learned advocate for the petitioner at length and also perused the material on record. But learned advocate for the petitioner has restricted his argument on the point that a representation has been made by the petitioner on 22.02.2006 and same has not been decided by the authority till 04.03.06 and, therefore, there is a delay of four days. Mr Kogje, learned Addl. Govt. Pleader has not filed the Affidavit-in-Reply but has fairly admitted the delay.

4. In the instant case, it appears that though representation has been sent on 22-2-2006, it remained undecided till 03.03.2006 and was decided only on 04.03.06. So, there is a delay. The Apex Court relying upon a decision of the Constitutional Bench in **K.M.Abdulla Kunhi and B.L.Abdul Khader V. Union of India, (1991) 1 SCC 476 : (1991 AIRSCW 362)**, has held in a case of **Rajammal Vs. State of Tamil Nadu and another reported in AIR 1999 S.C. 684** as under:

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"Detention-Unexplained delay of five days in considering and disposing detenu's representation- Mere absence of Minister at Headquarters not sufficient to justify delay- Detention vitiated."

4.1 It has been further held by the Apex Court in para 9 as under:

"The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

5. In the matter before the Supreme Court in **Rajammal (supra),** it appeared that there was a delay of five days. For that also, explanation has been put forward by the authority that Minister was on tour for a period of two days. Still, Apex Court has stated that five days consumed in deciding the representation of the detenu is a delay. In the present case, there is a delay of approximately three days in considering the representation. It is to be noted that in this case no satisfactory explanation has been put forward by the respondents. As representation of the petitioner has not been decided by the authority in time, the rights guaranteed under Article 22(5) of the

Constitution of India are violated which make the order of detention illegal.

6. For the foregoing reasons, the petition is allowed. The continued detention order No. PCB/DTN/PASA/31/2006 dated 16.02.2006 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(K.S. JHAVERI, J.)

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